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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Metron Corporation--Reconsideration

File: B-227014.2

Date: September 25, 1987

DIGEST

1. Where an agency declines to make relevant documents available to a protester because the agency considers such documents to be privileged, the General Accounting Office will still review such documents in arriving at its decision.

2. Argument advanced by protester in its request for reconsideration that basically reiterates previously-rejected argument does not warrant reversal or modification of the prior decision.

3. Contracting agency's cost realism analysis involves the exercise of informed judgment, and the General Accounting Office will not question such an analysis unless it clearly lacks a reasonable basis.

DECISION

Metron Corporation requests reconsideration of our decision denying its protest of the award of a contract for the preparation, review and revision of technical documents required for calibration of Navy test and monitoring equipment to DALFI, Inc. (DI), under request for proposals (RFP) No. N00123-86-R-0757, issued by the Naval Regional Contracting Center, Long Beach, California. Metron Corp., B-227014, June 29, 1987, 87-1 CPD ¶ 642.

We affirm our prior decision.

The RFP provided that the government would award a contract to the responsible offeror whose offer conforming to the solicitation was the most advantageous to the government, cost or price and other factors considered. For award purposes, the solicitation stated that technical quality was

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substantially more important than cost in determining the most advantageous proposal; the solicitation listed various evaluation criteria, including capability to perform, understanding of the requirements, and technical approach. The solicitation also cautioned offerors that as proposals become more equal in technical merit, the evaluated cost would become more important.

Two firms submitted proposals by the closing date for receipt of initial proposals. The Navy evaluated the initial technical and cost proposals, and both offerors were determined to be "well-qualified" to provide the services. The scoring and cost results based on initial proposals were as follows:

Offeror	Technical Score (10 point Scale)	Cost
Metron	7.8663	$8,268,093
DI	8.2575	9,371,775

The Navy did not find any technical uncertainties or deficiencies in either proposal and the proposals were generally rated, except by one evaluator, as outstanding to excellent. However, while Metron stressed its in-house expertise in its proposal, DI stressed work assignments based on best outside available expertise which was considered preferable by the Navy. Nevertheless, based on the superior technical scores of both offerors and the evaluation panel comments, the contracting officer determined that both offerors were essentially technically equal, with no technical deficiencies.

Consequently, the Navy requested best and final offers (BAFOs) "on costs only," because "all technical proposals are. . . considered essentially technically equal," so that cost was now "the main factor for award." Subsequently, "limited costs discussions" were orally conducted by telephone between the contract negotiator and Metron. The contract negotiator essentially informed Metron that changes in technical proposals were not requested and cost revisions should be made in indirect rates (overhead and general and administrative costs) and fee. Best and final results were as follows:

Offeror	Best and Final Offer
Metron	$7,748,966
DI	7,313,901

The Navy stated, and we confirmed, that there were no changes during BAFOs to either offeror's technical proposal.

The contracting officer determined that DI's proposal represented the greatest value to the government and therefore awarded the contract to that firm. Metron's protest followed.

In its protest, Metron, among other things, argued that award should have been made to it on the basis of initial proposals and that the Navy, without any basis or reason, refused to exercise its discretion to award on the basis of initial proposals. In our decision, we stated that award on the basis of initial proposals is permissive, not mandatory, and that if an agency determines that there is even a remote chance of obtaining a better price by conducting discussions and requesting BAFOs, it should do so. Accordingly, we denied this basis for protest.

Additionally, although Metron had not been provided with evaluation documents or with DI's proposals, Metron also argued that it was treated unequally by the Navy because DI, in its BAFO, was permitted to reduce its direct labor rates while Metron was not permitted to do so. After reviewing DI's initial and best and final cost proposals, we stated that we were not persuaded that DI made any reductions in its direct labor rates since DI had proposed "loaded rates" for labor hours which included substantial indirect costs; it is these "loaded rates" that were reduced and the reductions may have occurred solely in indirect costs. We emphasized that there were no changes in DI's technical proposals or in the number of labor hours initially proposed. We therefore also denied this protest ground.

In its request for reconsideration, Metron makes several arguments as to why its protest should have been sustained.

First, Metron complains that it was unfairly hampered in presenting its protest because the agency failed to make available to it various evaluation documents and that, therefore, these withheld documents should not have been considered by our Office in arriving at our decision. The short answer is that the documents were withheld pursuant to the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(f) (Supp. III 1985), which requires release of relevant protest documents to an interested party only if the documents do not give that party a competitive advantage and that the party is otherwise authorized by law to receive. The agency made a determination to withhold these documents under this authority but made the documents available to our Office. We do review such documents in arriving at our decision. Flight Systems, Inc., B-225463, Feb. 24, 1987, 87-1 CPD ¶ 210. We think that our bid

protest decisions must be based on the full factual and evidentiary record regardless of the fact that privileged documents are withheld from a protester.

Second, Metron argues that the Navy's favorable consideration of DI's proposed reliance on best available outside expertise for work assignments, rather than Metron's emphasis on in-house expertise, was contrary to the evaluation criteria and that we failed to consider this in our decision. We again note that both firms were "well-qualified" and that the record shows that this item (outside or in-house expertise) was an insignificant evaluation factor. Moreover, as stated in our prior decision, the contracting officer's determination to treat proposals as essentially technically equal eliminated any technical advantage either firm may have enjoyed and also eliminated the impact of the scoring of the only evaluator who did not rate Metron as outstanding or excellent and whose scoring Metron still complains about.

Next, Metron again argues that the Navy had no rational basis for not awarding on the basis of initial proposals since this was a cost reimbursement contract and the Navy was not obtaining a better "price" by requesting BAFOs but merely a cost estimate. Metron's essentially repetitious argument shows that it simply disagrees with the conclusions in our prior decision; however, mere disagreement or reiteration of a previously-rejected position does not provide a basis for reversing a decision.1/ Spectrum Leasing Corp., B-213647.3, Sept. 10, 1984, 84-2 CPD ¶ 267. Moreover, although a cost contract was solicited, the Navy, by conducting discussions and requesting BAFOs, was afforded the opportunity of again identifying the lowest probable cost proposal and, in this sense, obtaining a better "price."

Finally, Metron asserts that the "principal error" in our prior decision is that we did not consider Metron's argument that the Navy failed to conduct any cost realism analysis "whatsoever" of DI's BAFO, even though substantial cost reductions were made by DI that were unexplained. This contention was essentially first raised in Metron's comments in the initial protest and the Navy's report therefore did

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1/ For this same reason, we will not consider Metron's repetition of its argument that DI necessarily reduced its direct labor costs in its BAFO. We note that there is simply no evidence in the record that DI reduced its direct labor costs as opposed to its indirect costs.

not specifically address this argument. The Navy has now done so.

Generally, when a cost reimbursement contract is to be awarded, the offeror's estimated costs of contract performance and its proposed fee should not be considered as controlling since the estimates may not provide valid indications of final actual costs, which the government is required, with certain limits, to pay. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.605(d) (1986). The government's evaluation of estimated cost thus should determine the extent to which the offeror's estimates represent what the contract should cost, assuming reasonable economy and efficiency. This determination in essence involves an informed judgment of what costs actually would be incurred by acceptance of a particular proposal. Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 CPD ¶ 502. Because the contracting agency clearly is in the best position to make this cost realism determination, we limit our review to a determination of whether an agency's cost evaluation was reasonably based and was not arbitrary. Quadrex HPS, Inc., B-223943, Nov. 10, 1986, 86-2 CPD ¶ 545.

The Navy states that a cost realism analysis was conducted. According to the Navy, the contract negotiator evaluated DI's cost information to insure that it was consistent with the work to be performed. The negotiator then contacted DI to substantiate the reasons (already stated in the BAFO) for the cost reduction in its BAFO.2/ This cost information was then provided to Defense Contract Audit Agency (DCAA) (which had conducted an audit on the initial proposals). The DCAA auditor stated that DI's loaded labor rates were reasonable and that DI should be able to perform within the rates proposed. The auditor also stated that DI's reasons for reducing costs (i.e., lower overhead because of a broader labor base) appeared legitimate. Finally, the Navy states that the contract negotiator reconciled DI's proposed costs with an independent government estimate.

Based on this information, we have no basis to conclude that an informed determination of what costs would be incurred by

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2/ Metron alleges that this telephone call by the contract negotiator constituted "discussions" which necessitated another round of BAFOs. The information elicited, however, merely substantiated information already contained in DI's BAFO and DI was not afforded an opportunity to revise or modify its proposal. Accordingly, we think this exchange of information constituted "clarification" which did not rise to the level of discussions. See FAR, 48 C.F.R. § 15.601.

acceptance of DI's proposal was not properly made by the Navy.

Our prior decision is affirmed.

Harry R. Van Cleve
General Counsel